

37 Am. Jur. 2d Fraud and Deceit § 37

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

II. Elements and Requisites

B. Particular Elements or Considerations

2. Relationship of Parties

§ 37. What constitutes fiduciary or confidential relationship

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

The term “fiduciary or confidential relation” is a very broad one,¹ and the courts have carefully refrained from defining the particular instances of fiduciary relations in such a manner as to exclude other and perhaps new cases.² Whether a confidential relationship exists, for purposes of determining whether a fiduciary relationship exists, is determined from the actualities of the relationship between the persons involved.³

A fiduciary relationship is an extraordinary one and will not be lightly created.⁴ In some jurisdictions, express fiduciary relationships are created by contract or legal proceedings.⁵ When a fiduciary or confidential relationship is not created by law or contract, determining whether a fiduciary relationship exists requires looking at the particular facts and circumstances of a given case.⁶ Where there is not an express fiduciary relationship, one may be implied in law based on the specific factual situation surrounding the transaction and the relationship of the parties.⁷

Observation:

There are two types of fiduciary relationships: formal fiduciary relationships that arise as a matter of law, such as attorney-client, partnership, trustee, and principal-agent relationships; and informal fiduciary relationships or confidential relationships that may arise from moral, social, domestic, or personal relationships.⁸ The two types of fiduciary relationships have also been stated to be (1) those that arise from legal relations such as attorney and client, broker and client, partners, principal and agent, trustee and cestui que trust; and (2) those that exist as a fact, in which there is confidence reposed on one side, and the resulting superiority and influence on the other.⁹ Because not every relationship involving a high degree of trust and confidence rises to the stature of a formal fiduciary relationship,¹⁰ the law recognizes the existence of an informal or confidential fiduciary relationship.¹¹

In determining whether a confidential or fiduciary relationship exists between the parties, the relevant factors have been held to include—

- the degree of kinship between the parties; the disparity in age, health, education, or business experience between the parties; and the extent to which the servant party entrusted the handling of its business to the dominant party and placed its trust and confidence in it.¹²
- whether the plaintiff relied on the defendant for support, the plaintiff's advanced age and poor health, and evidence of the plaintiff's trust.¹³
- whether one person has to be taken care of by others; whether one person maintains a close relationship with another; whether one person is provided transportation and has medical care provided for by another; whether one person maintains joint accounts with another; whether one is physically or mentally weak; whether one is of advanced age or poor health; and whether there exists a power of attorney between the one and another.¹⁴
- in addition to confidence of the one in the other, the existence of a certain inequality, dependence, weakness of age, of mental strength, business intelligence, knowledge of the facts involved, or other conditions giving to one advantage over the other.¹⁵
- advanced age, youth, lack of education, ill health, and mental weakness.¹⁶

A fiduciary relationship is one founded on trust or confidence reposed by one person in the integrity and fidelity of another and which also necessarily involves an undertaking in which a duty is created in one person to act primarily for another's benefit in matters connected with such undertaking.¹⁷ A confidential relationship exists between two persons if one has gained the confidence of the other and purports to act or advise with the other's interest in mind.¹⁸ The party in whom the trust and confidence are reposed, in a confidential relationship, must act with scrupulous fairness and good faith in his or her dealings with the other and refrain from using his or her position to the other's detriment and his or her own advantage.¹⁹ A fiduciary or confidential relationship exists where confidence is reposed by one party and trust is accepted by the other, or where confidence has been acquired and abused,²⁰ or where influence has been acquired and abused, and in which confidence has been reposed and betrayed.²¹

On the other hand, solely because the relationship between the parties has been lengthy and cordial does not necessarily mean a confidential relationship exists, as a basis for informal fiduciary relationship.²² The fact that the parties are friends or prior business associates, or have trust and confidence in each other's integrity, does not automatically establish a confidential relationship, as required for a fiduciary relationship to arise under the law;²³ and even a longstanding relationship of friendship or cordiality is insufficient, without more, to establish an informal fiduciary relationship.²⁴ The mere fact that one party subjectively trusts another party does not alone indicate that confidence is placed in another in the sense demanded by fiduciary relationships because something apart from the transaction between the parties is required.²⁵ Because subjective trust is insufficient to create a fiduciary relationship, the mere fact that one party trusts another does not transform a business arrangement into a fiduciary relationship; the trust must be justifiable.²⁶

CUMULATIVE SUPPLEMENT

Cases:

Under Massachusetts law, a fiduciary relationship exists only if the plaintiff justifiably reposed trust in the defendant and the defendant knew of and accepted that trust. *Baker v. Goldman, Sachs & Co.*, 771 F.3d 37 (1st Cir. 2014).

Under Illinois law, the dominant party must accept the responsibility, and accept the trust of the other party, before a court can find a fiduciary relationship. *Avila v. CitiMortgage, Inc.*, 801 F.3d 777 (7th Cir. 2015).

Under Colorado law, a fiduciary is a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with the undertaking. *Lindeman v. The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*, 43 F. Supp. 3d 1197 (D. Colo. 2014).

Before a fiduciary duty can be breached, there must exist a fiduciary relationship; "fiduciary relation" exists between two parties when one is under a duty to act or to give advice for the benefit of the other upon a matter within the scope of the

relation. [Zazzali v. Ellison](#), 973 F. Supp. 2d 1187 (D. Idaho 2013).

Under Kentucky law, to prove that a fiduciary relationship existed, the aggrieved party must establish three elements: (1) the relationship existed before the transaction that is the subject of the action; (2) the aggrieved party's reliance was not merely subjective; and (3) the nature of the relationship imposed a duty upon the fiduciary to act in the principal's interest, even if such action were to the detriment of the fiduciary. [Guangzhou Consortium Display Product Co., Ltd. v. PNC Bank, Nat. Ass'n](#), 956 F. Supp. 2d 769 (E.D. Ky. 2013).

Under Louisiana law, the defining characteristic of a fiduciary relationship is the special relationship of confidence or trust imposed by one in another who undertakes to act primarily for the benefit of the principal in a particular endeavor. [Zaveri v. Condor Petroleum Corp.](#), 27 F. Supp. 3d 695 (W.D. La. 2014).

Under Pennsylvania law, a "fiduciary relationship" arises where one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side or weakness, dependence, or justifiable trust, on the other; such relationships include the relationship between attorneys and their clients, between majority and minority shareholders, and between joint venturers, but do not include relationships that arise solely out of an arms length business contract. [Alsa Corp. v. PPG Industries, Inc.](#), 2014 WL 1921152 (D. Mass. 2014).

Under Minnesota law, truck drivers who entered into lease agreements with a federally regulated motor carrier to haul freight failed to state a claim for breach of fiduciary duty in connection with the carrier's alleged failure to pay agreed compensation; the only allegation made with respect to the existence of a fiduciary relationship was that "Defendants owed Plaintiffs a fiduciary duty to accurately report charges billed by [the carrier] to its customers, accurately report each Plaintiff's compensation on settlement statements, and ensure that each Plaintiff's portion of revenue billed by [the carrier] was paid to each Plaintiff." [Ransom v. VFS, Inc.](#), 918 F. Supp. 2d 888 (D. Minn. 2013).

There are four elements essential to the establishment of a fiduciary relationship under New York law: (1) the vulnerability of one party to the other which (2) results in the empowerment of the stronger party by the weaker which (3) empowerment has been solicited or accepted by the stronger party and (4) prevents the weaker party from effectively protecting itself. [Lia v. Saporito](#), 909 F. Supp. 2d 149 (E.D. N.Y. 2012).

In determining whether a fiduciary relationship exists under New York law, courts look first to whether there is a contractual relationship between the parties and, where parties have entered into a contract, courts look to that agreement to discover the nexus of the parties' relationship and the particular contractual expression establishing the parties' interdependency. [Tucker v. Wyckoff Heights Medical Center](#), 52 F. Supp. 3d 583 (S.D. N.Y. 2014).

A fiduciary duty exists under Oregon law only where the parties are in a "special relationship," in which one party is obliged to pursue the other party's best interests. [Giuliano v. Anchorage Advisors, LLC](#), 2014 WL 1917949 (D. Or. 2014).

Under Oklahoma law, fiduciary relationship springs from an attitude of trust and confidence and is based on some form of agreement, either expressed or implied, from which it can be said that minds have been met to create mutual obligation. [In re Vetter Assets Service, LLC](#), 609 B.R. 279 (Bankr. W.D. Okla. 2019).

Agreement between ex-wife and ex-husband not to sell former marital home and to maintain it while children finished high school, which agreement was made despite fact that divorce decree specified they were to sell home and split net proceeds, did not give rise to informal fiduciary duty between husband and wife, where ex-wife and ex-husband did not have a relationship of trust and confidence following divorce. [Robbins v. Robbins](#), 550 S.W.3d 846 (Tex. App. Fort Worth 2018).

[END OF SUPPLEMENT]

1 Quinn v. Phipps, 93 Fla. 805, 113 So. 419, 54 A.L.R. 1173 (1927).

2 Robertson v. Robertson, 15 S.W.3d 407 (Mo. Ct. App. S.D. 2000).

3 Young v. Fawcett, 376 S.W.3d 209 (Tex. App. Beaumont 2012).

4 In re Estate of Abernethy, 2012 WL 1943760 (Tex. App. El Paso 2012).

5 Hogan v. Provident Life and Acc. Ins. Co., 665 F. Supp. 2d 1273 (M.D. Fla. 2009) (applying Florida law).

6 Savu v. SunTrust Bank, 293 Ga. App. 683, 668 S.E.2d 276 (2008); Benson v. Stafford, 407 Ill. App. 3d 902, 346 Ill. Dec. 828, 941 N.E.2d 386 (1st Dist. 2010); Linden Place, LLC v. Stanley Bank, 38 Kan. App. 2d 504, 167 P.3d 374 (2007); Crumley & Associates, P.C. v. Charles Peed & Associates, P.A., 730 S.E.2d 763 (N.C. Ct. App. 2012); American Bank Center v. Wiest, 2010 ND 251, 793 N.W.2d 172 (N.D. 2010).

7 Real Estate Value Co., Inc. v. Carnival Corp., 92 So. 3d 255 (Fla. 3d DCA 2012).

8 In re Estate of Abernethy, 2012 WL 1943760 (Tex. App. El Paso 2012).

9 Ellison v. Alexander, 207 N.C. App. 401, 700 S.E.2d 102 (2010); S.N.R. Management Corp. v. Danube Partners 141, LLC, 189 N.C. App. 601, 659 S.E.2d 442 (2008).

10 Young v. Fawcett, 376 S.W.3d 209 (Tex. App. Beaumont 2012).

11 SJW Property Commerce, Inc. v. Southwest Pinnacle Properties, Inc., 328 S.W.3d 121 (Tex. App. Corpus Christi 2010), review denied, (Mar. 9, 2012).

12 Benson v. Stafford, 407 Ill. App. 3d 902, 346 Ill. Dec. 828, 941 N.E.2d 386 (1st Dist. 2010).

13 Young v. Fawcett, 376 S.W.3d 209 (Tex. App. Beaumont 2012).

14 Yarbrough v. Patrick, 65 So. 3d 865 (Miss. Ct. App. 2011).

15 Kent v. United of Omaha Life Ins. Co., 484 F.3d 988 (8th Cir. 2007) (applying South Dakota law); Cole v. Wellmark of South Dakota, Inc., 2009 SD 108, 776 N.W.2d 240 (S.D. 2009).

16 Brown v. Wells Fargo Bank, NA, 168 Cal. App. 4th 938, 85 Cal. Rptr. 3d 817 (2d Dist. 2008).

17 de Jong v. Leitchfield Deposit Bank, 254 S.W.3d 817 (Ky. Ct. App. 2007).

18 In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

19 Weiley v. Albert Einstein Medical Center, 2012 PA Super 106, 2012 WL 1889634 (2012).

20 American Honda Motor Co., Inc. v. Motorcycle Information Network, Inc., 390 F. Supp. 2d 1170 (M.D. Fla. 2005) (applying Florida law).

21 Braddock v. Braddock, 60 A.D.3d 84, 871 N.Y.S.2d 68 (1st Dep’t 2009); Young v. Fawcett, 376 S.W.3d 209 (Tex. App. Beaumont 2012).

22 In re Estate of Abernethy, 2012 WL 1943760 (Tex. App. El Paso 2012).

23 Wilchcombe v. TeeVee Toons, Inc., 555 F.3d 949 (11th Cir. 2009) (applying Georgia law).

24 Lee v. Hasson, 286 S.W.3d 1 (Tex. App. Houston 14th Dist. 2007).

25 In re Estate of Abernethy, 2012 WL 1943760 (Tex. App. El Paso 2012).

26 Lindley v. McKnight, 349 S.W.3d 113 (Tex. App. Fort Worth 2011).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.